

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE ORDER

IN THE MATTER OF:

Flying Eagle, Inc. & Will R. Ibeling

ADMINISTRATIVE NO.
2010-AFO-45

TO: Will R. Ibeling
10136 S Avenue,
Ackley, IA
50601

I. SUMMARY

This Administrative Order (Order) requires Will R. Ibeling and Flying Eagle, Inc. (collectively referred to as Flying Eagle) to pay a penalty in the amount of \$10,000.00 and in the future land apply manure in a manner that is compliant with the laws of the State of Iowa.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Trent Lambert
IDNR Field Office #2
2300 15th St. SW
PO Box 1443
Mason City Iowa
Ph: 641/424-4073

Legal Issues/Appeal

Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources
Wallace Building 502 E. 9th St.
Des Moines, Iowa 50319-0034

Ph: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Wallace Building
502 E. 9th St.
Des Moines, Iowa 50319-0034
Attn: Carrie Schoenebaum

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II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1, or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Flying Eagle owns and or operates a swine feeding facility consisting of 5000 head of grow-finish hogs, and 1200 head of nursery pigs. The facility utilizes covered, formed manure storage structures. The facility is comprised of buildings at two locations which are permitted together as one facility. The manure that was involved in the violations which are the subject of this Order originated from a nursery building located at Sec 6 T89 R 19 Etna Township, Hardin County Iowa, which is locally known as 10123 S Avenue.¹
2. On June 21, 2006, Construction Permit No. CP-A2006-134 was issued to Flying Eagle for the construction of the above discussed animal feeding operation.
3. On October 23, 2009, Department Field Office # 2 received a complaint alleging that on October 21, 2009, manure from Flying Eagle was land applied without being incorporated, and approximately 360 feet from a residence.
4. On October 26, 2009, Department Environmental Specialist, Trent Lambert, went to the site to investigate. Mr. Lambert observed a harvested bean field north of a residence located at Sec. 7, T89-R19 Etna Township. Mr. Lambert walked north through the field. Approximately one-third of the way across the field he observed a color change in the bean stubble which indicated that manure had been land applied on a portion of the field. Mr. Lambert walked the line of the color change and detected a strong manure odor. This was in contrast to the other side of the color change where Mr. Lambert detected the smell of only manure free mud and water. He also observed mud puddles which smelled of hog manure and noticed a puddle consisting solely of manure inside a tire track. Based on these observations Mr. Lambert determined that the manure which had been land applied had not been injected or incorporated into the ground. At the point of the color change which is due north of a residence Mr. Lambert used a Bushnell laser range finder to measure the distance from this point to the

¹ The deed to this land is held Will R. Ibeling.

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residence. The distance was approximately 360 feet. Mr. Lambert then walked back to the north edge of the field and measured the distance from the north fence line to the residence. This distance was approximately 750 feet.

Following the onsite investigation, Mr. Lambert contacted Keith Kratchmer of Environmental Service Group, who prepared the manure management plan (MMP) for Flying Eagle. Mr. Kratchmer checked his records, confirmed the location of the field, and agreed that the field was not included in Flying Eagle's MMP.

5. On November 2, 2009, in a phone conversation with Mr. Lambert, Mr. Ibeling stated that his nursery building manure pit was full and he had no room in his other buildings to transfer the manure; therefore, he land applied it to the above discussed field. He further stated that he had thought the field was included in his MMP, he had purchased it the previous year and had taken soil samples.

6. On November 10, 2009, the Department mailed a Notice of Violation to Flying Eagle for the above discussed violations.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.173 authorizes the Environmental Protection Commission (Commission) to adopt rules establishing water quality and discharge standards relating to the operation and construction of animal feeding operations and the conditions under which the Department shall issue permits to such operations, and relating to the disposal of manure resulting from animal feeding operations. The Commission has done so at 567 IAC Chapters 60-65. Chapter 65, in particular, relates to animal feeding operations.

2. Iowa Code section 459.103 requires the Commission to adopt rules related to the construction or operation of animal feeding operations, including minimum manure control requirements. The Commission has done so at 567 IAC Chapter 65.

3. 567 IAC 65.3(3), requires

Separation distance requirements for land application of manure. Land application of manure shall be separated from objects and locations as specified in this subrule.

a. For liquid manure from a confinement feeding operation, the required separation distance from a residence not owned by the titleholder of the land, a business, a church, a school, or a public

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use area is 750 feet The separation distance for application of manure by spray irrigation equipment shall be measured from the actual wetted perimeter and the closest point of the residence, business, church, school, or public use area.

b. The separation distance specified in paragraph 65.3(3)"a" shall not apply if any of the following apply:

(1) The liquid manure is injected into the soil or incorporated within the soil not later than 24 hours after the original application.

(2) The titleholder of the land benefitting from the separation distance requirement executes a written waiver with the titleholder of the land where the manure is applied.

(3) The liquid manure originates from a small animal feeding operation.

(4) The liquid manure is applied by low-pressure spray irrigation equipment pursuant to paragraph 65.3(3)"d."

The above stated facts show non-compliance with this provision.

4. 567 IAC 65.17(8) requires the following

Location of manure application.

a. The manure management plan shall identify each farm where the manure will be applied, the number of acres that will be available for the application of manure from the confinement feeding operation, and the basis under which the land is available.

b. A copy of each written agreement executed with the owner of the land where manure will be applied shall be maintained with the current manure management plan. The written agreement shall indicate the acres on which manure from the confinement feeding operation may be applied and the length of the agreement. A written agreement is not required if the land is owned or rented for crop production by the owner of the confinement feeding operation.

c. If a present location becomes unavailable for manure application, additional land for manure application shall be identified in the current manure management plan prior to the next manure application period.

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The above stated facts show non-compliance with this provision.

5. On June 21, 2006, Construction Permit No. CP-A2006-134 was issued to Flying Eagle. Condition # 8 of this permit requires "that manure removed from the manure storage facilities shall be disposed of by land application in accordance with the approved MMP." The above stated facts show noncompliance with this provision.

6. Construction Permit No. CP-A2006-134 Condition # 6 (a) "requires that manure produced at this facility shall be injected or incorporated on the same date it is land applied." The above stated facts show noncompliance with this provision.

7. Construction Permit No. CP-A2006-134 Condition #6 (d) "requires that a separation distance of 500-feet be maintained during the injection or same day incorporation of manure to the closest residence." Flying Eagle land applied manure within 360 feet of a residence; the manure was neither injected nor incorporated on the same day. Therefore, the above stated facts show noncompliance with this provision.

V. ORDER

THEREFORE, the Department hereby orders the following:

1. In the future comply with all requirements of any permit issued by this Department; and
2. Flying Eagle shall pay a penalty in the amount of \$10,000.00 within 30 days of the date the Director signs this Order;

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day for violations of water pollution control laws; more severe criminal sanctions are also provided.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties; 567 IAC Chapter 10. Pursuant to rule 567 IAC 10.2, the Department has determined that the most equitable and

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efficient means of addressing the above-cited violations is the issuance of an Order with a penalty. The administrative penalty is determined as follows:

a. Economic Benefit. It is estimated that Flying Eagle land applied approximately 50,000 gallons of manure. It is also estimated that to have injected this manure it would have cost approximately \$2,000.00. Therefore, Flying Eagle saved approximately \$2,000.00 by not properly land applying the manure. For that reason, \$2,000.00 is assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. This matter involves multiple violations of rules, statutory provisions and permit conditions. These regulations are the backbone of the animal feeding operation program and are designed to protect the environment. Such violations threaten the integrity of this program. For these reasons, \$3,000.00 per day could be assessed for this factor for each of the five above-cited violations. However, in view of the maximum administrative penalty and the Culpability factor, below, \$3,000.00 is assessed for this factor.

c. Culpability. Land application of manure is an activity that poses a substantial environmental threat and therefore, demands the highest level of care. The land application of manure which is the subject of this Order occurred in violation of multiple rule, statutory and permit conditions. This shows a complete disregard for the laws of the State of Iowa and that the appropriate standard of care was not applied. Moreover, in order for Flying Eagle to obtain its construction permit, Mr. Ibeling voluntarily agreed to incorporate manure from his facility. Nevertheless, such incorporation was not done. Therefore, \$3,000.00 is assessed for failure to incorporate the manure and \$2,000.00 is assessed for violation of separations distances and for land applying the manure on a field not included in Mr. Ibeling's MMP. A total of \$5,000.00 is assessed for culpability.

VII. APPEAL RIGHTS

A written Notice of Appeal may be filed with the Director, at the address provided above, within 30 days of your receipt of this Order. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC 7. You may contact Carrie Schoenebaum, attorney for the Department, at (515) 281-

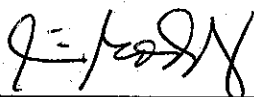
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0824 for more information regarding appeal procedures and resolution of this Order.

VIII. NONCOMPLIANCE

Compliance with section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of additional administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



Dated this 30

day of Sept

Patricia L. Boddy, Acting Director

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EPA, Field Office 2, Carrie Schoenebaum; Trent Lambert, VIII B. 4, C. 2, D. 2 (b).